IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7799 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PRAKASHBHAI JAYANTIBHAI PRAJAPATI

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 7799 of 2003

MR HL MENGHANI for Petitioner No. 1

MR RM CHAUHAN Ld. AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 24/09/2003

ORAL JUDGEMENT

By way of this special civil application, the petitioner has challenged the order of detention passed against him by the Police Commissioner, Vadodara City on

1.4.2003 under the exercise of powers under sec. 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "the PASA Act" for short).

The grounds of detention placed on record and served upon the petitioner disclose that the detaining authority placed reliance on two offences registered against the petitioner on 4.8.2002, 18.3.2003 under sec. 66B and 65 E of the Bombay Prohibition Act and in-camera statements of two witnesses recorded on 27.3.2003 by the proposing authority and verified by the detaining authority on 31.3.2003 revealing the incidents occurred on 25.2.2003 and 9.3.2003. From the above material, the impugned order came to be passed.

Ld. advocate Mr. Menghani for the petitioner and ld. AGP Mr. RM Chauhan for the respondents were heard at length. The affidavit in reply filed by the detaining authority is placed on record by ld. AGP is also taken into consideration.

Out of various contentions raised on behalf of the petitioner and controverted by ld. AGP, it appears that this matter can be disposed of on the ground that from the material placed before the detaining authority was it reasonable to come to the conclusion that the public order was disturbed and whether the privilege claimed by the witnesses under sec. 9(2) of the PASA Act is genuine. The grounds reveal that the detaining authority has relied upon the two offences registered against the petitioner, but while going through the record, it is revealed through two cases that the bulk of country liquor was seized by the police from the open space and thereafter the petitioner was linked with the said bulk of the said liquor. The case by itself therefore would not result into the conclusion about the bootlegging activity of the petitioner. Than the question is in-camera statements recorded by the proposing authority to the effect that the public order was disturbed due to bootlegging activity of the petitioner is genuine or not. True, it is that both the witnesses in para-1 of their statements have disclosed that the petitioner is carrying on the bootlegging activity and was a head strong person causing injury to the public health and disturbing the public order. When the detaining authority takes into consideration the statements of the witnesses along with the privilege as claimed by the witnesses, it is the duty of the detaining authority to verify the contemperous record. The Full

Bench decision of this court in the matter of Chandrakant Patel v. State of Gujarat reported in 1994(1) GLR P. 761 settled the law that the promise of the detaining authority of confidentiality given to the witnesses by itself cannot be regarded as sufficient ground for withholding the disclosure of the particulars and materials. The detaining authority is required to consider the general back ground, character, antecedent, criminal tendency or propensity etc. of the detenu and the reluctance of the witnesses who gave the statements against the detenu and the contemperous record in this respect. Though, the detaining authority in the grounds served upon the detenu mentioned that he verified the statements of the witnesses and their statements appear to be true to the detaining authority and further in affidavit in reply filed, the detaining authority has also stated that he personally verified the fear and apprehension expressed by the witnesses and claimed privilege which turned into subjective satisfaction of the detaining authority. It is not disclosed either in the grounds or in the affidavit filed that to rely upon the witnesses and claiming privilege under sec. 9(2) of the PASA Act, the detaining authority had take into consideration the antecedent, general back ground, character, criminal tendency or propensity of the detenu. It is clear on record that contemperous record available with the detaining authority was the filing of two cases under the Bombay Prohibition Act and except that no material was available with the detaining authority to claim privilege under sec. 9(2) of the PASA Act. This is so because when balance is struck between the personal liberty and the public safety, the subjective satisfaction of authority concerned must be based on concrete material and not imagination or intentional willingness of the informant-witnesses. It is the duty of the detaining authority to explore that what is stated by the informant witnesses is not merely an empty excuse invented by the informant but in reality the criminal propensity of the detenu affect the public order by a particular illegal activity. Therefore, in this case, though the detaining authority reached to the subjective satisfaction that the public order was disturbed and that identity of the informant witnesses are required to be kept concealed but such process was based on what material could not be brought on record. The order impugned, therefore, is required to be quashed and set aside on this ground alone.

In the result, this special civil application is allowed. The order impugned in this special civil application passed on 1.4.2003 by the Police

Commissioner, Vadodara City, under the PASA Act against the petitioner is quashed and set aside. The petitioner is directed to be set at liberty forthwith, if he is not required to be detained in jail for any other purpose. Rule made absolute with no order as to costs.

(J.R. VORA, J.)

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